

## § 401.605

### § 401.605 Omissions not a defense.

The failure of HCFA to comply with the regulations in this subpart, or with the related regulations listed in § 401.601(d), is not available as a defense to a debtor against whom HCFA has a claim for money or property.

### § 401.607 Claims collection.

(a) *General policy.* HCFA recovers amounts of claims due from debtors, including interest where appropriate, by—

(1) Direct collections in lump sums or in installments; or

(2) Offsets against monies owed to the debtor by the Federal government where possible.

(b) *Collection in lump sums.* Whenever possible, HCFA attempts to collect claims in full in one lump sum. However, if HCFA determines that a debtor is unable to pay the claim in one lump sum, HCFA may instead enter into an agreement to accept regular installment payments.

(c) *Collection in installments.* Generally, HCFA requires that all claims to be satisfied by installment payments must be liquidated in three years or less. If unusual circumstances exist, such as the possibility of debtor insolvency, an installment agreement that extends beyond three years may be approved.

(1) *Debtor request.* If a debtor desires to repay a claim in installments, the debtor must submit—

(i) A request to HCFA; and

(ii) Any information required by HCFA to make a decision regarding the request.

(2) *HCFA decision.* HCFA will determine the number, amount and frequency of installment payments based on the information submitted by the debtor and on other factors such as—

(i) Total amount of the claim;

(ii) Debtor's ability to pay; and

(iii) Cost to HCFA of administering an installment agreement.

(d) *Collection by offset.* (1) HCFA may offset, where possible, the amount of a claim against the amount of pay, compensation, benefits or other monies that a debtor is receiving or is due from the Federal government.

(2) Under regulations at § 405.350–405.358 of this chapter, HCFA may ini-

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tiate adjustments in program payments to which an individual is entitled under title II of the Act (Federal Old Age, Survivors, and Disability Insurance Benefits) or under the Railroad Retirement Act of 1974 (45 U.S.C. 231) to recover Medicare overpayments.

[48 FR 39064, Aug. 29, 1983, as amended at 61 FR 49271, Sept. 19, 1996; 61 FR 63748, Dec. 2, 1996]

### § 401.613 Compromise of claims.

(a) *Amount of compromise.* HCFA requires that the amount to be recovered through a compromise of a claim must—

(1) Bear a reasonable relation to the amount of the claim; and

(2) Be recoverable through enforced collection procedures.

(b) *General factors.* After considering the bases for a decision to compromise a claim under paragraph (c) of this section, HCFA may further consider factors such as—

(1) The age and health of the debtor if the debtor is an individual;

(2) Present and potential income of the debtor; and

(3) Whether assets have been concealed or improperly transferred by the debtor.

(c) *Basis for compromise.* Bases on which HCFA may compromise a claim include the following—

(1) *Inability to pay.* HCFA may compromise a claim if it determines that the debtor, or the estate of a deceased debtor, does not have the present or prospective ability to pay the full amount of the claim within a reasonable time.

(2) *Litigative probabilities.* HCFA may compromise a claim if it determines that it would be difficult to prevail in a case before a court of law as a result of the legal issues involved or inability of the parties to agree to the facts of the case. The amount that HCFA accepts in compromise under this provision will reflect—

(i) The likelihood that HCFA would have prevailed on the legal question(s) involved;

(ii) Whether and to what extent HCFA would have obtained a full or partial recovery of a judgment, depending on the availability of witnesses, or

other evidentiary support for HCFA's claim; and

(iii) The amount of court costs that would be assessed to HCFA.

(3) *Cost of collecting the claim.* HCFA may compromise a claim if it determines that the cost of collecting the claim does not justify the enforced collection of the full amount. In this case, HCFA may adjust the amount it accepts as a compromise to allow an appropriate discount for the costs of collection it would have incurred but for the compromise.

(d) *Enforcement policy.* HCFA may compromise statutory penalties, forfeitures, or debts established as an aid to enforcement or to compel compliance, if it determines that its enforcement policy, in terms of deterrence and securing compliance both present and future, is adequately served by acceptance of the compromise amount.

**§ 401.615 Payment of compromise amount.**

(a) *Time and manner of compromise.* Payment by the debtor of the amount that HCFA has agreed to accept as a compromise in full settlement of a claim must be made within the time and in the manner prescribed by HCFA. Accordingly, HCFA will not settle a claim until the full payment of the compromise amount has been made.

(b) *Effect of failure to pay compromise amount.* Failure of the debtor to make payment, as provided by the compromise agreement, reinstates the full amount of the claim, less any amounts paid prior to the default.

(c) *Prohibition against grace periods.* HCFA will not agree to inclusion of a provision in an installment agreement that would permit grace periods for payments that are late under the terms of the agreement.

**§ 401.617 Suspension of collection action.**

(a) *General conditions.* HCFA may temporarily suspend collection action on a claim if the following general conditions are met—

(1) *Amount of future recovery.* HCFA determines that future collection action may result in a recovery of an amount sufficient to justify periodic

review and action on the claim by HCFA during the period of suspension.

(2) *Statute of limitations.* HCFA determines that—

(i) The applicable statute of limitations has been tolled, waived or has started running anew; or

(ii) Future collections may be made by HCFA through offset despite an applicable statute of limitations.

(b) *Basis for suspension.* Bases on which HCFA may suspend collection action on a particular claim include the following—

(1) A debtor cannot be located; or

(2) A debtor—

(i) Owns no substantial equity in property;

(ii) Is unable to make payment on HCFA's claim or is unable to effect a compromise; and

(iii) Has future prospects that justify retention of the claim.

(c) *Locating debtors.* HCFA will make every reasonable effort to locate missing debtors sufficiently in advance of the bar of an applicable statute of limitations to permit timely filing of a lawsuit to recover the amount of the claim.

(d) *Effect of suspension on liquidation of security.* HCFA will liquidate security, obtained in partial recovery of a claim, despite a decision under this section to suspend collection action against the debtor for the remainder of the claim.

**§ 401.621 Termination of collection action.**

(a) *General factors.* After considering the bases for a decision to terminate collection action under paragraph (b) of this section, HCFA may further consider factors such as—

(1) The age and health of the debtor if the debtor is an individual;

(2) Present and potential income of the debtor; and

(3) Whether assets have been concealed or improperly transferred by the debtor.

(b) *Basis for termination of collection action.* Bases on which HCFA may terminate collection action on a claim include the following—

(1) *Inability to collect a substantial amount of the claim.* HCFA may terminate collection action if it determines